

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Vistapark Ground LLC, a
California Limited Liability
Company;
Jas Family, Inc., California
Corporation; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Vistapark Ground LLC, a California Limited Liability Company; Jas Family, Inc., California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Vistapark Ground LLC owned the real property located at or about 408 W. Capitol Expy, San Jose, California, between June 2019 and

1 August 2019.

2 3. Defendant Vistapark Ground LLC owns the real property located at or
3 about 408 W. Capitol Expy, San Jose, California, currently.

4 4. Defendant Vistapark Ground LLC owned the real property located at or
5 about 424 W. Capitol Expy, San Jose, California, between June 2019 and
6 August 2019.

7 5. Defendant Vistapark Ground LLC owns the real property located at or
8 about 424 W. Capitol Expy, San Jose, California, currently.

9 6. Defendant Jas Family, Inc. owned TOGO'S Sandwiches located at or
10 about 424 W. Capitol Expy, San Jose, California, between June 2019 and
11 August 2019.

12 7. Defendant Jas Family, Inc. owns TOGO'S Sandwiches located at or
13 about 424 W. Capitol Expy, San Jose, California, currently.

14 8. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained of,
17 and alleges a joint venture and common enterprise by all such Defendants.
18 Plaintiff is informed and believes that each of the Defendants herein,
19 including Does 1 through 10, inclusive, is responsible in some capacity for the
20 events herein alleged, or is a necessary party for obtaining appropriate relief.
21 Plaintiff will seek leave to amend when the true names, capacities,
22 connections, and responsibilities of the Defendants and Does 1 through 10,
23 inclusive, are ascertained.

24
25 **JURISDICTION & VENUE:**

26 9. The Court has subject matter jurisdiction over the action pursuant to 28
27 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
28 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1 10. Pursuant to supplemental jurisdiction, an attendant and related cause
2 of action, arising from the same nucleus of operative facts and arising out of
3 the same transactions, is also brought under California's Unruh Civil Rights
4 Act, which act expressly incorporates the Americans with Disabilities Act.

5 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
6 founded on the fact that the real property which is the subject of this action is
7 located in this district and that Plaintiff's cause of action arose in this district.
8

9 **FACTUAL ALLEGATIONS:**

10 12. Plaintiff went to the property to shop and eat at the Strip Mall in June
11 2019, July 2019 and August 2019 with the intention to avail himself of its
12 goods motivated in part to determine if the defendants comply with the
13 disability access laws.

14 13. The Strip Mall is a facility open to the public, a place of public
15 accommodation, and business establishments.

16 14. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
17 to provide wheelchair accessible entrance door hardware at Bonfare Market
18 and TOGO'S Sandwiches in conformance with the ADA Standards as it relates
19 to wheelchair users like the plaintiff.

20 15. On information and belief the defendants currently fail to provide
21 wheelchair accessible entrance door hardware at Bonfare Market and TOGO'S
22 Sandwiches.

23 16. Additionally, on the dates of the plaintiff's visits, the defendants failed
24 to provide wheelchair accessible restrooms at TOGO'S Sandwiches in
25 conformance with the ADA Standards as it relates to wheelchair users like the
26 plaintiff.

27 17. On information and belief the defendants currently fail to provide
28 wheelchair accessible restrooms at TOGO'S Sandwiches.

1 18. Finally, on the dates of the plaintiff's visits, the defendants failed to
2 provide wheelchair accessible dining surfaces at TOGO'S Sandwiches in
3 conformance with the ADA Standards as it relates to wheelchair users like the
4 plaintiff.

5 19. On information and belief the defendants currently fail to provide
6 wheelchair accessible dining surfaces at TOGO'S Sandwiches.

7 20. These barriers relate to and impact the plaintiff's disability. Plaintiff
8 personally encountered these barriers.

9 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
10 wheelchair accessible facilities. By failing to provide accessible facilities, the
11 defendants denied the plaintiff full and equal access.

12 22. The failure to provide accessible facilities created difficulty and
13 discomfort for the Plaintiff.

14 23. The defendants have failed to maintain in working and useable
15 conditions those features required to provide ready access to persons with
16 disabilities.

17 24. The barriers identified above are easily removed without much
18 difficulty or expense. They are the types of barriers identified by the
19 Department of Justice as presumably readily achievable to remove and, in fact,
20 these barriers are readily achievable to remove. Moreover, there are numerous
21 alternative accommodations that could be made to provide a greater level of
22 access if complete removal were not achievable.

23 25. Plaintiff will return to the Strip Mall to avail himself of their goods and
24 to determine compliance with the disability access laws once it is represented
25 to him that the Strip Mall and their facilities are accessible. Plaintiff is currently
26 deterred from doing so because of his knowledge of the existing barriers and
27 his uncertainty about the existence of yet other barriers on the site. If the
28 barriers are not removed, the plaintiff will face unlawful and discriminatory

1 barriers again.

2 26. Given the obvious and blatant nature of the barriers and violations
3 alleged herein, the plaintiff alleges, on information and belief, that there are
4 other violations and barriers on the site that relate to his disability. Plaintiff will
5 amend the complaint, to provide proper notice regarding the scope of this
6 lawsuit, once he conducts a site inspection. However, please be on notice that
7 the plaintiff seeks to have all barriers related to his disability remedied. See
8 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
9 encounters one barrier at a site, he can sue to have all barriers that relate to his
10 disability removed regardless of whether he personally encountered them).

11
12 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
13 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
14 Defendants.) (42 U.S.C. section 12101, et seq.)

15 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint.

18 28. Under the ADA, it is an act of discrimination to fail to ensure that the
19 privileges, advantages, accommodations, facilities, goods and services of any
20 place of public accommodation is offered on a full and equal basis by anyone
21 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
22 § 12182(a). Discrimination is defined, inter alia, as follows:

- 23 a. A failure to make reasonable modifications in policies, practices,
24 or procedures, when such modifications are necessary to afford
25 goods, services, facilities, privileges, advantages, or
26 accommodations to individuals with disabilities, unless the
27 accommodation would work a fundamental alteration of those
28 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

1 b. A failure to remove architectural barriers where such removal is
2 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
3 defined by reference to the ADA Standards.

4 c. A failure to make alterations in such a manner that, to the
5 maximum extent feasible, the altered portions of the facility are
6 readily accessible to and usable by individuals with disabilities,
7 including individuals who use wheelchairs or to ensure that, to the
8 maximum extent feasible, the path of travel to the altered area and
9 the bathrooms, telephones, and drinking fountains serving the
10 altered area, are readily accessible to and usable by individuals
11 with disabilities. 42 U.S.C. § 12183(a)(2).

12 29. When a business provides facilities such as door hardware, it must
13 provide accessible door hardware.

14 30. Here, accessible door hardware has not been provided in conformance
15 with the ADA Standards.

16 31. When a business provides facilities such as restrooms, it must provide
17 accessible restrooms.

18 32. Here, accessible restrooms at TOGO'S Sandwiches have not been
19 provided in conformance with the ADA Standards.

20 33. When a business provides facilities such as dining surfaces, it must
21 provide accessible dining surfaces.

22 34. Here, accessible dining surfaces at TOGO'S Sandwiches have not been
23 provided in conformance with the ADA Standards.

24 35. The Safe Harbor provisions of the 2010 Standards are not applicable
25 here because the conditions challenged in this lawsuit do not comply with the
26 1991 Standards.

27 36. A public accommodation must maintain in operable working condition
28 those features of its facilities and equipment that are required to be readily

1 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

2 37. Here, the failure to ensure that the accessible facilities were available
3 and ready to be used by the plaintiff is a violation of the law.

4
5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 38. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code § 51(b).

15 39. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. Cal. Civ. Code, § 51(f).

17 40. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
19 rights to full and equal use of the accommodations, advantages, facilities,
20 privileges, or services offered.

21 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
22 discomfort or embarrassment for the plaintiff, the defendants are also each
23 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
24 (c).)

25 42. Although the plaintiff encountered frustration and difficulty by facing
26 discriminatory barriers, even manifesting itself with minor and fleeting
27 physical symptoms, the plaintiff does not value this very modest physical
28 personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: June 24, 2020

CENTER FOR DISABILITY ACCESS

By:



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Attorney for plaintiff